BOOK REVIEWS

CASES ON FUTURE INTERESTS AND ILLEGAL CONDITIONS AND RESTRAINTS. Selected from Decisions of English and American Courts, by Albert M. Kales of the Chicago Bar. St. Paul: West Publishing Co., 1917; pp. xxvi, 1456.

If there is a living American qualified to prepare material for the student of future interests probably law teachers would agree that Professor Kales is the man. He has written a book on Future Estates in Illinois which has made a distinct impression on the law of that state and is recognized elsewhere as a sound and scholarly treatise. He has taught the course on future interests and illegal restraints at Northwestern University Law School for many years, and last year gave the same course at Harvard.

Having led classes through all the six volumes of Gray's Cases on Property a number of times, it has always been the impression of the reviewer that volume five is the masterpiece of that matchless collection. It deals with the topics to which Professor Gray's attention before and after publication of the set seems to have been mainly addressed; as indicated by his published articles and treatises. In this, as in other parts of his collection of cases Professor Gray followed the policy of giving a number of cases on any topic touched, rather than attempting to cover all branches of the subject; and of laying emphasis on the leading cases, often to the exclusion on the later ones. The result of this policy was that many topics went untouched, though of large practical importance; and, also, the students often persist in assuming from the absence of late American cases that the matter is only of historic interest. No doubt Professor Kales and all teachers of the subject have felt the reflection of this student sentiment.

Professor Kales has taken volume five of Gray's Cases and so much of volume six as relates to illegal restraints as the basis of the present collection. He has avowedly made no departure from the matter and form adopted by Professor Gray unless he had some object to gain thereby which he deemed worth the change; and for the reason that Gray's collection is known and in use by teachers in several schools who might object to radical changes and also because he is a great admirer of Professor Gray, he has followed the original collection in many cases where others might have desired a change.

The changes made by Professor Kales which seem most significant in glancing through the present collection, are in giving greater attention to the later American cases, often, as it seems, to the unwarranted exclusion of leading cases, the addition of very extensive annotations throughout the work referring to many American decisions on kindred collateral points, the introduction of cases on several topics not touched by Professor Gray at all, and the rearrangement of the matter included in the original into smaller subdivisions or a different connection. Many of these changes seem to be decided improvements; in other instances some may prefer the original.

To speak in detail, it has often seemed that Professor Gray asked a good deal of teachers of the subject, if he intended his books to be used by others, (as no doubt he did), when he introduced such cases as *Rice* v. *Boston & W. R. Corp.*, 12 Allen 141, without even a hint that there is not another decision, English or American, agreeing with it. It has seemed that if he designed to arouse the student to alertness by giving him an occasional jolt, he might take notice that the knowledge of teachers is not encyclopedic and give us a hint; for if we too go wrong there is no one to set us right. But Kales goes farther than Gray by including the same case with notes to other cases that the student might take to support it, if he did not read them; and few students in the present strenuous law courses find much time to read beyond the daily assignment; indeed the teacher who reads all the cases cited by Professor Kales in these notes will require more time than most of us have. Moreover, the conflict, if noticed in reading the cases cited, simply challenges the reader to further search to find which is right.

Again, one may perhaps think the student might be better employed than in reading the English cases on whether a gift to the "survivors" of the share of one dying without issue enabled the representatives of one of the class dying with issue at an earlier date to participate; since the rule of the American courts that such expressions are not divesting provisions but provisions to avoid lapse, prevents the question arising here. Yet Professor Kales has thought it worth while to follow Professor Gray in this respect.

As to the advantage of using late American decisions as the basis of instruction, it seems that, while the student is thereby disabused of his notion that the matter is archaic, they are not as good as the leading cases for class discussion, by reason of the fact that these late cases usually are reported at much greater length than the old, requiring more space and reading, and often reciting the very matter in detail which we would prefer to save for class-room discussion prejudiced by endorsement or condemnation by the court, or knowledge of how other courts have regarded it.

Already fault has been found with Professor Kales's work beyond its deserts. On the whole it is very commendable. The publishers announce that an abridged edition will soon appear, intended to cover the same matter in less space; and perhaps that will seem better adapted to our use.

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THE PUBLIC DEFENDER, A NECESSARY FACTOR IN THE ADMINISTRATION OF JUSTICE, by Mayer C. Goldman, New York: G. P. Putnam's Sons, 1917; pp. 96.

After a casual reading of this argument, one rather favors a publicly paid defender for poverty-stricken unfortunates accused of crime. After a study of it, one suspects that its author is a bit of a cynic; that he knows the art of politics to be in creating opinion not by reason but by appeal to the subconscious and irrational emotions, and is aware that irrefutable logic attractively enough phrased may successfully screen an unsupportable premise.